


The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document was signed electronically on April 2, 2018, which may be different from its entry on the record.

IT IS SO ORDERED.

Dated: April 2, 2018




ARTHUR I. HARRIS
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE RICHARD M. OSBORNE
DEBTOR

CASE No. 17-17361
CHAPTER 11
JUDGE ARTHUR I. HARRIS

**ORDER GRANTING MOTION OF RICHARD
M. OSBORNE TO SELL A PARCEL OF
COMMERCIAL REAL PROPERTY LOCATED
AT 7000 FRACCI COURT, MENTOR OH
FREE OF ANY INTEREST OF ANY ENTITY
OTHER THAN THE ESTATE**

The matter before the Court is the motion of Richard M. Osborne, Debtor in Possession (“Debtor”) for an order pursuant to 11 U.S.C. §§ 102(1)(B)(i), 363(b) and (f), authorizing the sale of the property of the estate described below free of any interest of any entity other than the estate [Doc. 47] (“Motion”); the Objection of the United States Trustee to Motion of Richard M. Osborne To Sell a Parcel of Commercial Real Property Located at 7000 Fracci Court, Mentor, OH Free of Any Interest of Any Entity Other Than the Estate [Doc. 73] (“UST” and “UST Objection”); and the Brief in Opposition to Motion of Richard M. Osborne To Sell a Parcel of Commercial Real Property Located at 7000 Fracci Court, Mentor, OH Free of Any Interest of Any Entity Other Than the Estate [Doc. 78] filed by Chicago Title Insurance Company

(“Chicago Title” and “CT Objection” and with the UST Objection collectively the “Objections”). A hearing on the Motion and the Objections having been held on March 27, 2018 commencing at 11:00 AM (the “Hearing”); the UST having withdrawn the UST Objection on the record at the Hearing, the Court having heard the arguments of the parties and being informed in the premises finds and orders as follows.

THE COURT FINDS THAT:

1. The Motion and Notice of the Motion was certified as being duly served according to the Bankruptcy Code and Federal Rules of Bankruptcy Procedure.
2. The Debtor seeks to sell a parcel of commercial real property located at 7000 Fracci Court, Mentor Ohio permanent parcel no. 16B0390000050 (“Fracci Court”). The Debtor proposes to sell the estate’s interest in Fracci Court for \$900,000.00 (“Gross Proceeds”) on the terms and conditions set forth in the offer to purchase from James A. Brown or his nominee (“Buyer”).
3. The Buyer has no connection to the Debtor and Buyer seeks to purchase Fracci Court in good faith.
4. Prepetition Fracci Court was titled in the name of the Richard M. Osborne Trust (“Trust”). On December 17, 2017 the Debtor revoked the Trust which caused the Trust’s property to revert in the Debtor on that date. Fracci Court is therefore property of this bankruptcy estate.
5. Prepetition Fracci Court was the subject of a foreclosure proceeding filed in the Lake County Court of Common Pleas by CF Bank *CFBank v. Richard M. Osborne, Trustee et al.*, Case No. 15CF001708 (the “Foreclosure”). In the Foreclosure case CFBank sought to foreclose the equities of redemption of all interests in Fracci Court junior in priority to a mortgage it held against it in the original amount of \$787,500.00 (the “CF Mortgage”). The fair market appraisal

for Fracci Court filed in the Foreclosure showed an estimated sale value of \$900,000.00. The proposed sales price is therefore fair and reasonable for Fracci Court.

6. The only interest superior to the CF Mortgage in Fracci Court is the lien for real estate taxes payable to the Lake County Treasurer up to the date of closing estimated to be in the amount of \$86,810.62, and tax certificates held by Tax Ease Ohio LLC estimated to be in the amount of \$81,293.98 (collectively “Real Estate Taxes”).

7. On August 1, 2016 CFBank transferred its interest in the CF Mortgage the judgment taken on it in the Foreclosure (the “Decree”) to 7001 Center Street LLC, and entity wholly owned by the Debtor.

8. There are numerous holders of an interest in Fracci Court but all non-objecting holders of any interest in Fracci consent to the sale free of their interest.

9. Many of the interests in Fracci Court are in bona fide dispute. .

10. As the remaining interests are junior in priority to the CF Mortgage, the holder of any interest in Fracci Court may be compelled in a legal or equitable proceeding to accept a money satisfaction of such interest.

11. In order to provide adequate protection of any interest in Fracci Court, the Debtor will deposit the sale proceeds into a separate debtor-in-possession account, and disburse from the sale proceeds an amount sufficient to pay the Real Estate Taxes in full to the Lake County Treasurer and Tax Ease Ohio LLC. Alternatively the Debtor and the Buyer may use a title company to handle the closing. The Debtor will hold the Gross Proceeds less the amount used to pay: (i) the Real Estate Taxes prorated to the date of closing; (ii) one half of any title company escrow fee; (iii) one half of any real estate transfer taxes chargeable to the bankruptcy estate, and (iv) one half of an owner’s fee title policy in the amount of the purchase price pending further order of

the Court (the “Net Proceeds”). The Buyer shall pay one half of the title company escrow fee, one half of any real estate transfer taxes and one half of an owner’s fee title policy in the amount of the purchase price and any costs related to the filing of the deed.

12. Therefore Fracci Court may be sold free of any interest of any other entity.

THEREFORE IT IS ORDERED THAT:

1. The CT Objection is overruled;
2. The Debtor is hereby authorized to sell Fracci Court, free and clear of any interest of any entity other than the estate;
3. The Debtor is hereby authorized to disburse from the Gross Proceeds (or to authorize a title company to disburse from the Gross Proceeds) an amount sufficient to pay (i) the Real Estate Taxes prorated to the date of closing; (ii) one half of any title company escrow fee; (iii) one half of any real estate transfer taxes chargeable to the bankruptcy estate, and (iv) one half of an owner’s fee title policy in the amount of the purchase price pending further order of the Court (“Closing Costs”);
4. The Debtor will hold the Net Proceeds in a separate Debtor-in-Possession account pending further order of this Court;
5. All other interests in Fracci Court are hereby transferred to the Net Proceeds for distribution pursuant to later order of this Court, in accordance with the respective rights and priorities of the holders any interest in Fracci Court, as such right appears and is entitled to be enforced against Fracci Court, the Estate or the Debtor under the Bankruptcy Code or applicable non-bankruptcy law.

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Prepared By:

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CERTIFICATE OF SERVICE

_____ a copy of the foregoing Order Granting Motion to Sell was served on following on this
_____ day of March, 2018 by regular U.S. mail or by ECF.

The following is a list of the parties who are on the list to receive e-mail notice/service for this case:

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